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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1952

No. 379

G. W. DANFORTH,

Petitioner,

vs.

THE UNITED STATES

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS AND BRIEF IN SUPPORT THEREOF.

GEORGE W. DANFORTH,
Pro Se.

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To the Supreme Court of the United States:

Petition

1. This petition is submitted by George W. Danforth, a Lieutenant Commander in the U. S. Navy, retired, for a writ of certiorari to review case No. 50316 in the U. S. Court of Claims. Filed herewith is transcript from Court of Claims.

Summary of the Matter Involved and Question Presented

2. A summary of the Matter involved and the question presented are, namely: whether or not petitioner has had over 23 years of service, total, in the Navy before and since

retirement. There is no controversy over petitioner's length of service before retirement, namely, 13 years, 8 months, 25 days.

3. This case turns, as stated on page 5, of the transcript, on allowance or not of proceed time as a service credit in determining petitioner's claim of over 23 years total service. (Proceed time is defined on page 7 of the Record.) Over 23 years total service places petitioner in a higher pay bracket. Proceed time, allowed an officer of the active list as a service credit, is denied a retired officer under like conditions.

Statutes Involved

4. Statutes involved are (1) an Act of Congress of June 7, 1900 (31 Stat. 703) which reads "During a period of 12 years from the passage of this Act any naval officer on the retired list may, at the discretion of the Secretary of the Navy, be ordered to such duty as he may be able to perform at sea or on shore, and while so employed shall receive the pay and allowances of an officer of the active list of the grade from which he was retired".

This law, expiring in 1912, was not re-enacted. It was soon followed by a similar Act of Congress, quoted as follows: (2) "In time of peace any naval officer on the retired list, may, with his consent, in the discretion of the Secretary of the Navy, be ordered to such duty as he may be able to perform at sea or on shore". (Act of August 22, 1912, 37 Stat. 329). (3) The Act of August 29, 1916, (39 Stat. 556-581) reads, "Provided, that hereafter any retired officer of the naval service who shall be detailed to active duty shall, while so serving, receive the active duty pay and allowances of the grade, not above that of lieutenant commander in the Navy or major in the Marine Corps, that he would have attained in due course of promotion if he had remained on the active list for a period beyond the date of

his retirement equal to the total amount of time during which he has been detailed on active duty since his retirement".

Statutes quoted nos. (2) and (3) continue in effect.

Decisions of the Comptroller General Here Involved

5. These are, in chronological order, (1) 5 Comp. Gen. 207, Nov. 1, 1898: (2) Volume 29 of "Decisions of the Comptroller of the Treasury", page 308 dated October 24, 1919: (3) 20 Comp. Gen. 845, May 31, 1941.

Reasons Relied On for Allowing This Writ

6. (1) Defendant has cited against petitioner, to substantiate denial of proceed time to petitioner, Article C-5315 (1) (g) of a Manual of the Navy Department Bureau of Personnel, but has failed to establish that this Article was in effect prior to 1912, when petitioner accumulated the major part of his proceed time for which he claims credit for service on four assignments to duty requiring travel under Act of June 7, 1900; nor is this Article established as having been in effect prior to 1920 when petitioner served one tour of duty under Act of August 22, 1912. This Article is quoted on page 7, of the transcript.

(2) The statement of the sentence at bottom of p. 7, top of p. 8 of record, is in error. Also, Defendant's Cross Motion For Summary Judgment, certified copies of which is enclosed with this brief, mentions unidentified parts of navy regulations cited against petitioner, with unsupported general statements. Further, defendant has cited against petitioner whatever is current against allowance of proceed time, unmindful of whether it is or is not retroactive in this case.

(3) The statment at the bottom of page 7 of the record is in error in stating that petitioner is allowed actual travel time for two round trips between his home, Charleston, Mo.,

and San Francisco, California, where he was twice stationed. He is allowed travel time in accord with a general ruling only, short of actual and necessary time required for these journeys early in the present century.

(4). The opinion of Court of Claims reveals nothing to indicate that any part of evidence submitted by petitioner to sustain his claim was considered. A Memorandum from the then Bureau of Navigation, Navy Department, of June 6, 1924, submitted as evidence of proceed time allowed on release from duty in 1919 was apparently not considered. The Court, arriving at its opinion, followed closely defendant's Cross Motion for Summary Judgment. This Motion makes erroneous statements which are copied in the opinion of that Court.

Petitioner Submits the Following Brief in Support of Reasons

7. Petitioner served after retirement under Acts of June 7, 1900, and August 22, 1912. All service under these Acts for which he claims proceed time credit *when he prepared to travel from his home to his station* pre-dates both the 1919 and the 1941 rulings of the Comptroller General, hence these rulings should not apply to this case. Petitioner submits that by no construction which can be given the Acts quoted herein can proceed time credits be justly denied him. The ruling of the Comptroller General of November 1, 1898, is in favor of petitioner. It provides that a retired officer, upon detachment from his station may continue on duty until he has proceeded to his home by the shortest usually traveled route. Letter from the Judge Advocate General of the Navy of July 19, 1951 (JAG:II:1:WWK:-vdh), gives this information. Photostat copies of this two-page letter are enclosed with this petition. This favorable ruling is substantiated by the Memorandum to Captain

Leigh referred to in paragraph 3, section 4 on page 4 of this brief. This memorandum states definitely that proceed time is allowed petitioner on detachment from his last tour of duty, November, 1919. This allowance of proceed time is according to the ruling of the Comptroller General of November 1, 1898 (5 Comp. Gen. 207), referred to on page 4 of this brief.

8. The important part of this case from standpoint of petitioner is his claim for credit for proceed time accumulated between 1902 and 1912, when he served under Act of June 7, 1900. That which is cited against the validity of this claim is condensed between the statement "Retired and reserve officers" etc. on page 7 and continuing to "Plaintiff's motion for summary judgment is denied" on page 8 of the record. The opinion of the Court of Claims excludes much of the general and unsubstantiated statements of defendant's Cross Motion, though some errors are included. This case, brought from the obscurity of the past because of Navy Department's error in reckoning petitioner's length of service, is yet obscure to those who have searched records and thereby have introduced rulings too modern to apply, including rulings of the Comptroller General of 1919 and 1941 referred to on page 3 of this petition. Petitioner could not hope to get a favorable decision by making any statements which he cannot substantiate as correct.

9. Petitioner asks to submit the following statements in reference to that which is cited against the validity of this claim, referred to in preceding paragraph 8. Petitioner, with aid of the legal office of Mare Island Navy Yard, has made diligent inquiry to learn when Article C-5315 (quoted on page 7 of the record) came into being, whether or not it was in force prior to 1912 to affect this case. In its form as quoted, the Article is a revision of a former Article,

since the present Article includes reserve officers, not a part of naval personnel prior to 1912. That this Article is associated in the record with the ruling of the Comptroller General (20 Comp. Gen. 845) which is dated May 31, 1941, gives a fair inference of its having come into being in consequence of that ruling. Further, the Article is from the Manual of the Bureau of Personnel, as stated on page 7, of the record. This Bureau came into existence in 1942 as successor to the Bureau of Navigation, hence the Article may have been adapted from the older Bureau with or without changes. Further, page 7 of the record refers to quoted regulations, not identified, which place retired and reserve officers in the same category. It may be inferred from this sentence that the Manual has its source in navy regulations. At no place in the record, nor in the more expanded part of the Cross Motion, is found any clue to the origin of Article C-5315 other than stated in this paragraph. There is nothing to establish that the Article was in effect prior to 1912. That the origin of the Article is in obscurity is affirmed by the third paragraph of a letter from Bureau of Personnel of August 20, 1952 (Pers-E242-ECN:re 2647), a copy of which is enclosed. This letter refers to the Career Compensation Act of 1949, which does not apply to petitioner.

The Navy Department has ruled that petitioner's service is less than 23 years, as stated in the record. There is no evidence either in the record nor in the Cross Motion to establish this estimate other than is stated in Article C-5315 (1) (g). This Article is the only definite citation made to support this estimate. Referring to the Cross Motion, it may be asked whether defendant or the Court should decide "it is simply a case of internal administration of the Department of the Navy's affairs."

The last sentence of page 7 of the record is in error. Petitioner did not apply for duty. The then Bureau of

Steam Engineering let it be known that members of the former engineer corps were needed in service. Petitioner therefore volunteered and was called when it suited the needs of the Bureau. Under the Act of June 7, 1900, a retired officer was ordered to duty without his consent. His consent was required as a provision of the Act of August 22, 1912. Petitioner was asked to accept orders to duty in 1916. This tour began in peace time and continued through First World War.

If it is true, as stated on page 8 of the record, then a retired officer, having applied for duty, could be pictured as having nothing to do but await orders. In reality, such a picture was not true. When petitioner volunteered he did not know that he would be called. In no case he did not know when orders would arrive. He needed to continue his work in private employment and trust to the short interval he thought was an allowance of proceed time to take care of details of winding up his employment and getting family and baggage ready for travel.

An active list officer at home on leave or otherwise not in service knew that he would receive orders. He had no engagements in private employment. Reason for allowing proceed time for a retired officer existed far more, notwithstanding the suppositional statement at the top of page 8 of the record.

Although the passage of regulations referred to on page 8 of the record is not stated, the only definite citation against allowance of proceed time made in this case is Article C-5315. That the provisions of this Article apply to petitioner's service particularly between 1902 and 1912 has not been established.

10. Estimate of the Navy Department of petitioner's total service is 22 years, 11 months, 9 days. This estimate, received from the Navy Department Bureau of Supplies and

Accounts is shown in detail in enclosed "STATEMENT OF SERVICE", marked A. No proceed time is allowed, nor is actual and necessary travel time allowed on two round trips between Charleston, Mo., and San Francisco, California.

On page 3 of plaintiff's Cross Motion, are details of proceed time claimed by petitioner, his necessary travel time, travel time allowed by Navy.

Of proceed time, a letter of 19 July, 1951 from the Judge Advocate General of the Navy (JAG:II:1:WWK:vdh), states that in accord with a ruling of the Comptroller General (5 Comp. Gen. 207, Nov. 1, 1898), that active duty of a retired officer may continue until he has, upon detachment, proceeded to his home. The interval between detachment and arrival home includes proceed time as continuous with his assignment to his station. This allowance is in accord with the enclosed copy of a Memorandum to Captain Leigh, Assistant Chief of the former Bureau of Navigation, paragraph 2 of that Memorandum. Proceed time at the end of four assignments of petitioner is noted in the record, amounting to 12 days. This total of 12 days added to 22 years, 11 months, 9 days gives an estimate of 22 years, 11 months, 21 days.

Navy Department makes an arbitrary allowance of 20 days travel for two round trips between Charleston, Mo., and San Francisco, California. The actual and necessary time spent on these two trips was 35 days. Petitioner asks the Court to grant this allowance for reasons stated as follows: It was not possible, early in the present century, by any means of public transportation, to make a journey between Charleston, Mo., and San Francisco in 5 days. Charleston, 180 miles south of St. Louis, is on a branch railway which maintained but one slow train, on an all day run, each way each day. Arriving at St. Louis at end of day, a traveler rarely could get train accommodations westward

until next day. Through tickets westward were not sold in Charleston.

Eastward from San Francisco train service was good to Chicago, not to St. Louis. Trains in those days were slower and not at frequent intervals as of to-day. Arriving in St. Louis homeward bound, prompt connections were seldom possible. These details are set forth to clarify that 5 days was not sufficient for this travel.

Allowance of 15 days for travel for two round trips between Charleston and San Francisco as a necessary excess over arbitrarily allowed time of 20 days, added to 22 years, 11 months, 21 days (estimate on page 10 of this brief) gives 23 years, 6 days. Petitioner asks the Court to so decide.

Referring to the defendant's Cross Motion, the 5 days increased travel was due to delay in getting through train accommodations because of July 4 holiday travel, delayed schedules, and extreme summer heat in middle west.

11. Petitioner's orders to duty between 1902 and 1912 were under the Act of June 7, 1900, not subject to any ruling or regulation not established as in effect during those years. His last tour of service, 1916-1919, was under the Act of August 22, 1912.

The Act of June 7, 1900 provides "* * * any naval officer on the retired list may * * * be ordered to such duty as he may be able to perform * * * and while so employed shall receive the pay and allowances * * *". Petitioner claims that he was employed from the instant he received his orders, based on reasons stated as follows, namely: When not in service, petitioner was on inactive status, obliged to seek and accept employment not forbidden by federal law to retired officers, this to supplement his retired pay to support family and self. It was never understood otherwise than that petitioner was allowed a

specified interval for necessary preparation to travel as was allowed other officers. Time taken for preparation was never questioned. Petitioner claims, then, that he was employed immediately on receipt of orders, that employment did not begin at a later time. On receipt of orders he was obliged to turn from private employment and prepare to obey. Each of petitioner's orders began with the word *Proceed,* a definite command. In his orders home when released from duty, these orders contained the command *proceed.* He would not have turned from private employment and taken up preparation to travel for any other reason than in obedience to orders. It is therefore clear, petitioner submits, that his preparations were in no way a part of his private employment, clearly a service for the Government. He therefore claims that he should not be denied service credit for the interval which must be given to travel preparation, a credit given to other officers. All officers merit the same consideration under the same circumstances. While in service, assignments of work are the same for all officers, active or retired, of the same rank. At times petitioner was given special assignments in engineering work, for example preparing material for instruction in the Naval Academy.

Petitioner claims that he was employed, for the reasons stated, from the time of receipt of his orders. That retired officers are denied service credit for time necessarily given to travel preparation is, petitioner submits, an unjust discrimination. Petitioner asks the Court to so decide.

12. Referring to the origin or Article C-5315 of the Bureau of Personnel Manual, petitioner asks the attention of the Court to a letter, copies of which are enclosed with this brief, from Navy Department Bureau of Supplies and Accounts, dated September 11, 1952 (B2L L16-4). Close reading of this letter reveals that different meanings are

given to proceed time in preparing to leave home on receip of orders as compared with proceed time after detachmen from duty and preparing to return home.

Petitioner sought the information of this letter of September 11, 1952, to amplify the letter of August 20, 1952, of Bureau of Personnel (Pers. B242-ECN: re 2647) (referred to on page 6 of this brief) on the history of Article C-5315. Letter of September 11 states (as marked on the extra copy enclosed with letter of transmission of this brief to the Clerk of the Court) "Many of the instructions formerly contained in Navy Regulations have in recent years been published in the Bureau of Naval Personnel Manual. In a revision of the instructions on this subject in the Bureau of Personnel Manual in 1943, the specific language was inserted stating that proceed time was not authorized in case of retired officers recalled to active duty or when proceeding to their homes upon release from active duty."

It is evident then, that Article C-5315 as cited against petitioner is of the 1943 edition of this Manual, and should not apply in lieu of whatever edition the present Manual succeeded.

Seeking then to trace the history of this Manual prior to 1943, this letter states "While this language was first inserted in 1943, it did not reflect a new rule but constituted the expression of a rule which had heretofore been followed under the construction of the original Navy Regulations of 1909."

Whatever the ruling of Navy Regulations of 1909, not necessarily stated in the letter, regulations of that date should not apply to petitioner's service prior to the year 1909. Petitioner accumulated most of the proceed time claimed between 1902 and 1908, namely 24 days as shown on page 3 of the Cross Motion of defendant. No evidence has been found through diligent inquiry of petitioner of another

form of Article C-5315 nor of any Manual prior to the present edition. Nor is there any evidence of a regulation or ruling dating prior to 1909 denying proceed time to retired officers. Whatever the letter of September 11, 1952, states of denial of proceed time in its text, no ruling nor regulation is specified to substantiate that proceed time was denied retired officers prior to 1909. This letter states that the original regulations did not specifically mention retired officers upon recall to active duty. Petitioner therefore submits that no specified ruling nor regulation is cited to authorize denial of proceed time to petitioner of 24 days between 1902 and 1908, hence he asks the Court to so decide. This number of days added to Navy Department's estimate of 22 years 11 months 9 days establishes the validity of petitioner's claim to 23 years and 3 days on this count of total active service.

In conclusion, petitioner submits that his claim to more than 23 years total active service in the Navy is established by evidence contained in this brief. Specific references to sustain this claim are named as follows:

(A) Page 4. The service for which petitioner claims proceed time when he prepared to leave his home on all 5 tours of duty requiring travel, 1902-1916, predates both the 1919 and 1941 rulings of the Comptroller General denying credit for proceed time.

(B) Pages 4 and 5. That proceed time for retired officers is allowed by ruling of Comptroller General of November 1, 1898, (5 Comp. Gen. 207) is stated in letter of July 19, 1951, from the Judge Advocate of the Navy (JAG:II:1: WWK: vdh) and is evidenced in paragraph 2 of the Memorandum for Captain Leigh dated June 6, 1924, (this Memo mentioned on page 4, and on page 9 of this brief).

(C) The only definite citation in Court of Claims of defendant against credit of proceed time claimed by petitioner,

the only definite citation on which that Court had to base an adverse decision, is Article C-5315 of Bureau of Personnel Manual. That the history of this Article is vague, that there is question of its being in force prior to 1912 to apply to petitioner's services between 1902 and 1911, is indicated in Bureau of Personnel letter of August 20, 1952 (Pers-E242-ECN: re 2647). This letter is referred to on page 6 of this brief. Further, pages 13-14 of this brief establishes definitely that neither Article C-5315 nor Navy Regulations of 1909 should apply to petitioner's services prior to 1909.

(D) Page 7 of this brief gives an estimate of the Navy Department of 22 years, 11 months, 9 days as petitioner's total service. The details of pages 7, 8, 9 of this brief justify adding proceed time of 12 days on return home and an excess of 15 days on necessary and actual travel time on two round trips between Charleston, Mo., and San Francisco, California. The proceed time of 12 days is allowed by ruling of Comptroller General of November 1, 1898.

(E) Pages 11, 12, states reasons why petitioner's length of service should be based on interpretation of Acts of Congress under which he served, and not otherwise. Estimate of such service in accord with these Acts is given in detail on two enclosed sheets "Petitioner's Estimate of Service", as 23 years and 13 days.

Respectfully submitted,

GEORGE W. DANFORTH.